

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WILLIAM F. CROWELL)	WT Docket No. 08-20
)	
Application to Renew License for Amateur)	FCC File No. 0002928684
Radio Service Station W6WBJ)	
)	

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU’S OPPOSITION TO CROWELL MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

1. On April 7, 2017, applicant William F. Crowell (Crowell) filed a motion to dismiss the above-captioned matter on the grounds that the Federal Communications Commission (Commission) and the Office of the Administrative Law Judge lack subject matter jurisdiction over Crowell.¹ Specifically, Crowell asserts – without citation to any legal authority – that “Congress unconstitutionally established the Commission”² and as such, cannot exercise jurisdiction over him. For the reasons discussed below, the Acting Chief, Enforcement Bureau (Bureau), through his attorneys, respectfully opposes Crowell’s Motion.³

¹ See Licensee’s Motion to Dismiss for Lack of Subject Matter Jurisdiction [Title 47 CFR, Chapter I, Subchapter A, Part 1, Subpart B, Sec. 1.351 and Federal Rule of Civil Procedure 12(b)(1)], filed Apr. 7, 2017 (“Motion”).

² *Id.* at 2.

³ In response to Crowell’s filing of an interlocutory appeal with the Commission to the Presiding Judge’s *Memorandum Opinion and Order*, FCC 17M-13, the Presiding Judge suspended the hearing as required pursuant to Section 1.245(b)(4) of the Commission’s rules and suspended the parties’ rights to file motions and pleadings “except for oppositions to motions that were filed prior to issuance of [his] Order.” *Order*, FCC 17M-18 (ALJ, rel. Apr. 7, 2017). Crowell filed his Motion on April 7, 2017, just prior to the issuance of *Order*, FCC 17M-18. Thus, the Bureau’s pleading is appropriate.

2. First, Crowell purports to base his Motion on Section 1.351 of the Commission's rules⁴ and Federal Rule of Civil Procedure 12(b)(1).⁵ Neither of these rules govern Crowell's motion. Section 1.351 of the Commission's rules, for example, states that except as otherwise provided, "the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern formal hearings." Application of the Federal Rules of Evidence to the admission of evidence in the course of a Commission administrative hearing (trial) has no bearing on the legitimacy of Crowell's interlocutory motion to dismiss.

3. In addition, there is nothing in the Commission's rules that suggests that the Federal Rules of Civil Procedure apply to – or are binding upon – Commission administrative proceedings before the Presiding Judge. Rule 1 of the Federal Rules of Civil Procedure specifically states that "[t]hese rules govern the procedure in all civil actions and proceedings in the United States district courts."⁶ The Commission's administrative tribunal is not an Article III district court. Indeed, Crowell's Motion is devoid of any legal support for his assertion that because the Commission's rules do not offer a provision for dismissing Commission proceedings for lack of subject matter jurisdiction, "Federal Rule of Civil Procedure 12 *must* govern."⁷ On this basis alone, Crowell's Motion should be denied.

4. Second, Crowell's Motion fails to provide any legal basis for his assertion that the Presiding Judge and the Commission lack the legal authority to adjudicate the above-captioned proceeding. Specifically, Crowell's Motion fails to identify any legal support for his contention

⁴ See 47 C.F.R. § 1.351.

⁵ See Fed. R. Civ. P. 12(b)(1). See also Motion at 1.

⁶ Fed. R. Civ. P. 1.

⁷ Motion at 1 (emphasis added).

that “Congress unconstitutionally established the Commission”⁸ or that “[t]he Commission is operating under an unconstitutional and phony delegation of authority from Congress.”⁹ In addition, Crowell’s Motion fails to offer any evidence that either the Communications Act of 1934, as Amended, which specifically creates “a commission to be known as the ‘Federal Communications Commission’...[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio,”¹⁰ or the rules pursuant to which the Commission operates set forth in Title 47 of the Code of Federal Regulations,¹¹ have been overturned or held unconstitutional. Nor is there any evidence in Crowell’s Motion that any court or legislative body has concluded that the Commission lacks the authority to “hold such proceedings as it may deem necessary from time to time in connection with the investigation of any matter which it has power to investigate under the law....”¹² Rather, Crowell’s Motion offers nothing but hyperbolic rhetoric about what he believes the law should be, and not what it is. Crowell’s Motion, therefore, is baseless and should be denied on this ground as well.¹³

5. Lastly, Crowell offers absolutely no legal or factual support for his suggestion that the Commission has admitted to or engaged in an “arbitrary and capricious failure and refusal to enforce §97.101(b) of Part 97 [of the Commission’s rules] by...allowing stations the Bureau *likes* to run stations they *don’t like* off the frequency....”¹⁴ Moreover, it appears that in

⁸ *Id.* at 2.

⁹ *Id.* at 3 (internal citation omitted).

¹⁰ 47 U.S.C. § 1.

¹¹ *See* 47 C.F.R. § 1.1 *et seq.*

¹² 47 C.F.R. § 1.1.

¹³ The Bureau notes that to the extent Crowell contends that the Commission as an entity is unconstitutional and is operating under an unconstitutional delegation of authority as it pertains to the above-captioned administrative proceeding, he must also contend that the Commission’s authority both to issue the amateur radio license at issue in this proceeding, or to renew it, is likewise unconstitutional.

¹⁴ Motion at 5.

his Motion, Crowell has (at best) grossly mischaracterized the language of the Bureau's Forfeiture Order issued against him on August 2, 2016.¹⁵ Despite Crowell's assertions to the contrary, the Forfeiture Order does not state or even suggest that "the Bureau has no obligation whatsoever to enforce §97.101(b); may pick and choose which of its Rules it wishes to apply and enforce; and may sub-delegate its responsibility for applying and enforcing §97.101(b) to private individuals; i.e., amateurs that the Bureau happens to like, and that such amateurs may run off the frequency anyone they don't like."¹⁶ Rather, the Forfeiture Order makes clear that the Bureau will enforce Section 97.101(b) of the Commission's rules against any amateur radio operator who interrupts ongoing transmissions, for purposes of checking in to a net or for any other reason.¹⁷ For these reasons, as well, Crowell's Motion should be denied.

6. For the reasons set forth above, the Bureau opposes Crowell's motion to dismiss.

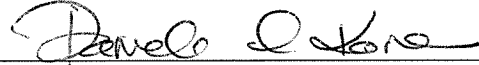
¹⁵ See *In the Matter of William F. Crowell, Licensee of Amateur Radio Station W6WBJ, Diamond Springs, California*, Forfeiture Order, File No. EB-FIELDWR-15-00019827 (rel. Aug. 2, 2016) ("Forfeiture Order").

¹⁶ Compare Motion at 5, n.9 citing page 6 of the Forfeiture Order to the Forfeiture Order at 6.

¹⁷ See, e.g., Forfeiture Order at 6, ¶15.

Respectfully submitted,

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April 13, 2017

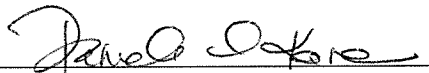
CERTIFICATE OF SERVICE

Pamela S. Kane certifies that she has on this 13th day of April, 2017, sent copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO CROWELL MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION" via email to:

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